Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

MUHAMMED ANWAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Under the marriage fraud statute (8 U.S.C. § 1325(c)), whether the citizenship of the parties entering the alleged fraudulent marriage is an element of the crime?

Under the marriage fraud statute (8 U.S.C. § 1325(c)), whether a foreign national's fraudulent intent when entering a marriage can be inferred when he does not testify at trial?

Can there be a violation of the marriage fraud statute (8 U.S.C. § 1325(c)) when the female United States citizen testifies she intended a true marriage and the foreign national does not testify?

Whether the district court abused its discretion, and violated the Supreme Court's holding in *Huddleston v. United States*, 485 U.S. 681, 108 S. Ct. 1496, 97 L. Ed. 2d 771 (1988), when it denied defense counsel's repeated requests for a limiting instruction prior to evidence being admitted against defendant under Federal Rule of Evidence 404(b)?

Whether the district court abused its discretion when it responded to a jury note in the negative regarding reviewing the trial testimony from two important government witnesses without consulting the defendant?

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OPINIONS BELOW

On November 14, 2005, the Eighth Circuit Court of Appeals affirmed the judgment of the District Court for the Northern District of Iowa. *United States v. Anwar*, 428 F.3d 1102 (8th Cir. 2005). App. 1. Anwar's petition for rehearing was denied December 23, 2005. App. 32.

JURISDICTION

On November 5, 2004, the "JUDGMENT IN A CRIMINAL CASE" was entered by the Honorable Linda R. Reade, in the United States District Court for the Northern District of Iowa. App. 21. Jurisdiction was pursuant to 18 U.S.C. § 3231.

On November 14, 2005, the Eighth Circuit Court of Appeals affirmed the judgment of the District Court. *United States v. Anwar*, 428 F.3d 1102 (8th Cir. 2005). App. 1. Anwar's petition for rehearing was denied on December 23, 2005. App. 32. Jurisdiction was pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

Jurisdiction for the Supreme Court is from 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional

U.S. CONST. amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Statutes

8 U.S.C. § 1325(c)

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

18 U.S.C. § 2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 371

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

18 U.S.C. § 3742(a)

(a) Appeal by a Defendant. – A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence –

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . .

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to

the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE

On November 19, 2003, Anwar was charged with one count of conspiracy to commit marriage fraud in violation of 18 U.S.C. § 371 and one count of aiding and abetting the commission of marriage fraud in violation of 8 U.S.C. § 1325(c) and 18 U.S.C. § 2. Indictment.

A jury trial began February 17, 2003, and ended with guilty verdicts on both counts on February 23, 2003. Verdict Forms; App. 38-41.

On November 5, 2004, Anwar was sentenced to six months in prison under the Federal Sentencing Guidelines. Sentencing transcript p. 47.

At trial eight females testified Anwar sought to arrange marriages between them and foreign nationals. Anwar was to receive no benefit for his role in effectuating these marriages.

Amy Akhtar, 28, was married to Mamoon Akhtar and had known Anwar for six to seven years. Trial tr. 390-92, 410-11, 425.[1] In 1999, Akhtar communicated with Anwar about her family problems. Trial tr. 392-93. Akhtar had one conversation with Anwar about wanting a better life and Anwar agreed she deserved better. Trial tr. 394, 401. Anwar said he could help her have a better life and his nephew was a good guy. Trial tr. 394.

[1] "Trial tr." refers to the trial transcript.

Akhtar testified she married Anwar's nephew because she wanted a better life, that it was a true marriage, and that she intended to live together with the nephew as husband and wife. Trial tr. 399-400. They went through a Muslim ceremony, had pictures taken after the wedding, and she stayed in Pakistan for a week following the wedding. Trial tr. 402-03. The marriage did not workout because the nephew did not appeal to her. Trial tr. 400.

Amanda Reinier, 23, had been friends with Anwar since 1995. Trial tr. 319, 321. Out of friendship Anwar had previously given her spending money and assisted her ex-husband in purchasing a vehicle. Trial tr. 366-72. She testified at Anwar's request that she married Hamid Bashir. Trial tr. 328-34. Bashir did not testify at trial. With the help of an attorney she filled out immigration paperwork in order for Bashir to become a United States citizen. Trial tr. 334-35, 377-78. Reinier decided to join the army and then came forward claiming her marriage to Bashir was fraudulent. Trial tr. 353-55.

Amy Gauthier, 30, had known Anwar since 1996. Trial tr. 290-91. Anwar asked her to marry his nephew in Pakistan and she said no. Trial tr. 292-93.

Mary Tucker, 28, testified that in 2001 Anwar brought two Pakistani men into a store and asked her to marry them and she said no. Trial tr. 102-05. Anwar was aware she was unmarried with three children and struggling financially. Trial tr. 116-25.

Keeley Hoyt Ali, 21, had known Anwar since 2002. Trial tr. 136, 152. She spent a lot of time hanging around Anwar's store. Trial tr. 200. She was subsequently employed at the store. Trial tr. 140. She spent time socializing at Anwar's home with people from the Pakistani community. Trial tr.